Editor's note: Appealed -- stipulated dismissal, Civ.No. 83-3025 (D.D.C. Feb. 10, 1984)

LSMJ EXPLORATION GROUP

IBLA 82-499 Decided July 18, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application U 48759.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

   An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

   BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

3. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Legibility

   The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which

reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the qualifications file of the filing service listed on the application.

4. Constitutional Law: Generally -- Oil and Gas Leases: Generally -- State Laws

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

APPEARANCES: Craig J. Zicari, Esq., and Kevin S. Cooman, Esq., Rochester, New York, for appellant; John H. Evans, Esq., Denver, Colorado, for protestant and second drawee James J. Fischer.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

LSMJ Exploration Group (LSMJ) has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated January 15, 1982, rejecting oil and gas lease application U 48759. LSMJ's application received first priority for parcel UT 58 in the March 1981 simultaneous oil and gas lease drawings.

On October 1, 1981, BLM requested additional information concerning the preparation of the LSMJ application. BLM specifically requested copies of any identifying attachments, submitted with appellant's application, which would identify the applicant. BLM also asked LSMJ to state if assistance was received or any agreement made concerning the application and requested a copy of any such written agreement.

On October 19, 1981, BLM received from LSMJ a statement of partnership qualifications, a copy of the partnership agreement showing a 25 percent interest in Sylvester J. Zicari, and a copy of a subscription agreement between LSMJ and Upstate Oil Advisory Services, Inc. (Upstate). The documents arrived attached to a copy of the October 1, 1981, BLM decision without cover letter, explanation, or evidence of prior submission.

BLM rejected the lease application for the following reasons. First, the signature on the application did not disclose the relationship between the signer and the applicant as required by 43 CFR 3102.2-4 and 43 CFR 3112.2-1(b). Second, the applicant did not submit the information required by 43 CFR 3102.2-4(a) along with its application, nor did it file the additional information required by 43 CFR 3102.2-4(b) within 15 days after filing the application. Third, LSMJ had submitted only a blank copy of an advisory

and service agreement with Upstate and that LSMJ had not submitted the list of clients and addresses required by 43 CFR 3102.2-6(b). 1/

The regulations to which BLM referred required the following disclosures:

> § 3102.2-4 Associations including partnerships.
>
> (a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title:
>
> (1) A certified copy of its articles of association or partnership;
>
> (2) A statement that it is authorized to hold oil and gas leases; and
>
> (3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.
>
> (b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

43 CFR 3102.2-4 (1981).

> § 3102.2-6 Agents.
>
> (a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102, effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6, as well as the association qualifications found in 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the party affected to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). See discussion, infra.

> copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.
>
> (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

43 CFR 3102.2-6 (1981).

Appellant contends that it fulfilled these regulations by filing the required documents in a timely manner, but BLM mislaid the documents. LSMJ argues that 43 CFR 3102.2-4 and 43 CFR 3102.2-6 are procedural regulations which frustrate the purpose and intent of the Act, and that, therefore, they are invalid. LSMJ further argues that it should benefit retroactively from the elimination of these requirements on February 26, 1982. See note 1. LSMJ claims that the second and third drawn applicants have no vested interest in the lease. Alternatively, LSMJ argues that the signature on its application was proper, that Sylvester Zicari did not need to identify himself because he was one of the partners, i.e., he was part of the applicant partnership. LSMJ asserts that under New York State law, one partner can sign for all, therefore, the Zicari signature should be valid.

The second drawee for parcel UT 58, James J. Fischer, protested to BLM that lease U 48759 should not issue to LSMJ but to him. The second drawee entered an appearance before this Board to argue, as he did below, that LSMJ violated 43 CFR 3112.2-1(b), 43 CFR 3102.2-1(c), and 43 CFR 3102.2-4.

[1] The provisions of 43 CFR Subpart 3102 in effect at the time of the LSMJ submittals provided that an oil and gas lease application filed in the name of a partnership in a simultaneous filing was properly rejected where said application was not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information could be found. A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) (Supp. V 1981); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). A simultaneous oil and gas lease application under 43 CFR Subpart 3112 (as opposed to an over-the-counter lease offer) may not be cured by submission of additional information after the drawing. This would impinge upon the rights of the second drawn applicant. Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

As this Board noted in Westates Group No. 8, 69 IBLA 186, 190 (1982), 43 CFR 3102.2-1(c) (1981) allowed an applicant to file under a serial reference number those documents required by 43 CFR 3102.2-4 (1981). Thus, a partnership could choose to comply using either 43 CFR 3102.2-4(a) and (b) or 43 CFR 3102.2-1(c). The Board has held that compliance with one or the other of these regulations was required or the application was properly rejected. Century Oil and Gas Corp., 58 IBLA 227 (1981); Stephen A. Pitt, 57 IBLA 365 (1981).

The regulations allowed alternative methods of complying with the agency disclosure requirements. An applicant could have filed the necessary documentation with its application pursuant to 43 CFR 3102.2-6(a). The second alternative would have been compliance with 43 CFR 3102.2-6(b) by filing a copy of the uniform agreement with the application and filing a list of names and addresses of each applicant participating under the agreement within 15 days of the filing of the application. The third alternative permitted an applicant to comply with 43 CFR 3102.2-6 by placing evidence of agency qualifications on file and making reference in future filings to the serial number assigned to such evidence, rather than submitting the evidence with each filing. Arthur H. Kuether, 65 IBLA 184, 187-88 (1982), and cases cited therein.

LSMJ did not refer to a serial number on its application. Therefore, unless the necessary documents were submitted with the application (or with the application as supplemented within 15 days under 43 CFR 3102.2-6(b)), appellant's application was properly rejected.

[2] The BLM inquiry of October 1, 1981, was directed to the documents that appellant might have sent with its application. BLM received certain documentation, on October 19, 1981, without elaboration or any indication of prior submission. If these documents were submitted for the first time in response to BLM's inquiry, they would not be timely. 43 CFR 3102.2-4 (1981); 43 CFR 3102.2-6 (1981).

Appellant's assertion that the required documents were submitted to BLM in a timely fashion implies that the documents were either lost or misplaced by BLM. The legal presumption of regularity, albeit rebuttable, supports the official acts of public officers in the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). Absent substantial corroborating evidence to the contrary, it is presumed that the document was not filed, rather than lost or misplaced by BLM. Elizabeth D. Anne, 66 IBLA 126 (1982). Uncorroborated statements to the effect that the required documents were submitted timely are not sufficient to overcome the presumption that such documents were not filed. Mrs. G. C. Fajardo, 69 IBLA 70 (1982).

Alternatively, appellant argues that since 43 CFR Subpart 3102 was changed on February 26, 1982, the new regulatory scheme should be applied to it retroactively. On February 26, 1982, the Department published interim

final regulations revising 43 CFR Subpart 3102 to eliminate 43 CFR 3102.2-4 which required the filing of a partnership qualifications statement. 47 FR 8544 (Feb. 26, 1982). Although in some circumstances the Board may apply revised regulations to a pending matter to benefit the affected party (see, e.g., James E. Strong, supra), it is not possible to do so in this case due to the intervening rights of the second and third priority applicants. See 30 U.S.C. § 226(c) (Supp. V 1981); Ballard E. Spencer Trust, Inc., supra; Alvin B. Gendelman, 67 IBLA 333 (1982), appeal filed sub nom. Gendelman v. Watt (D.D.C. filed December 30, 1982). See note 1 supra.

[3] In addition, the BLM decision found that the application did not comport with 43 CFR 3112.2-1(b). This requires that "[a]pplications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship." 43 CFR 3112.2-1(b) (emphasis added). There was no reference to either a relationship between the applicant and the signatory or a file where the information might be found. This application was correctly rejected as improperly "rendered." 2/

[4] Appellant also argues that, absent an explicit Federal rule, the law of New York State, where the applicant and its filing service is located, should be applied. Appellants assert that New York law allows one partner to sign for all, therefore, the application should be validly signed. As to this contention, we note that

> under the Supremacy Clause of the United States Constitution, Federal law necessarily overrides conflicting state laws with respect to Federal public lands. U.S. Constitution, art. VI, cl. 2; Kleppe v. New Mexico, 426 U.S. 529, 543 (1976); Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), aff'd 445 U.S. 947 (1980). The Federal laws and regulations are the relevant body of law in this case. Lamar M. Richardson, Jr., 42 IBLA 333 (1979).

LSMJ Exploration Group, 63 IBLA 42, 45 (1982).

The conduct of a fair, sound, and proper simultaneous oil and gas leasing system requires that strict compliance with the regulatory provisions be maintained. Any latitude afforded the first priority applicant impinges upon the rights of the second. Ballard E. Spencer Trust, Inc., supra. Since appellant and its agent did not comply with the requirements set out in 43 CFR 3102.2-4 (1981), 43 CFR 3112.2-1(b) (1981), and 43 CFR 3102.2-6 (1981), its application was properly rejected.

2/ We note that merely because the application form does not provide for the signer's title the applicant is not excused from rendering the application in a manner that will reveal the name of the signatory and the relationship between the signatory and the applicant. See Liberty Petroleum Corp., 73 IBLA 368, 370 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge